

Warren County Public Schools Title IX Training July 29, 2025

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Agenda

1. Training Requirement Overview (2020 Regulations)
2. Title IX and its Implementing Regulations
3. Identifying Sex Discrimination and Sexual Harassment
4. Responding to Knowledge of Sex Discrimination and Sexual Harassment
5. Grievance Process
6. Requirement of Impartiality

Warren County Public Schools - JFHA/GBA

Specific Requirements for Training

- Training is required for all Title IX Coordinators, investigators, decision-makers, and informal resolution process facilitators.
- Must be trained on:
 - Definition of sexual harassment prohibited by Title IX.
 - Scope of the school division's education program or activity.
 - How to conduct an investigation and grievance process - including appeals and informal processes.
 - How to serve impartially (avoiding prejudgment of facts, conflicts of interest, and bias).
- Decision makers must also receive training on issues of the relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- Investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Title IX and Its Implementing Regulations



Title IX

- Title IX of the Education Amendments of 1972 states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

- Title IX requires that agencies promulgate regulations to provide guidance to recipients of federal financial assistance who administer education programs or activities on Title IX enforcement.
 - 2020 – USDOE adopted regulations that focused more on school divisions' response to sexual harassment, a form of discrimination on the basis of sex, and the processes by which school divisions responded to such claims.
 - ~~2024 – USDOE revised the regulations to address and define sex discrimination more broadly but provided more flexibility to school divisions in how they respond to discrimination claims.~~

Potential Consequences of Non-Compliance

- U.S. Department Of Education, Office for Civil Rights (“OCR”) Investigation
 - Investigates and enforces compliance with Title IX
 - “Voluntary” corrective action, including OCR oversight, monetary reimbursement
 - Loss of federal funding
- Referral to U.S. Department of Justice (“DOJ”) for Enforcement
 - 2024: Justice Dept secured \$4.14M settlement with UMBC to pay \$4.4M where it allowed former head coach to sexually harass male student-athletes and discriminate against female student-athletes for years.
- Private Lawsuit for Injunctive Relief or Monetary Damages
 - 2018: Dartmouth College sued for \$70M. Settled for \$14M where male professors in science department engaged in widespread sexual harassment of female college and graduate students.

Identifying Sex Discrimination and Sexual Harassment (2020 Regulations)

Who is Protected by Title IX?

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

“Person” includes:

- Students
- Employees
- Applicants for employment, and
- Other individuals participating or attempting to participate in the education program or activity.

What is Sex Discrimination?

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

- Sexual Harassment
- Exclusion from participation on the basis of sex
- Denial of benefits on the basis of sex
- Other discrimination on the basis of sex, including differential treatment
 - Ex: Dress Codes (school divisions cannot adopt or enforce dress codes in a discriminatory manner)
- Discrimination based on pregnancy
- Retaliation

WCPS' Definition of Sexual Harassment Prohibited by Title IX

34 C.F.R. § 106.30/WCPS Policy JFHA/GBA – Section II DEFINITIONS:

“Sexual harassment prohibited by Title IX”

Sexual harassment prohibited by Title IX means conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
- Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Sexual Harassment

“Quid Pro Quo”

“Unwelcome Conduct” Standard

Specific Offenses

Definitions for Specific Offenses

- “Sexual assault” as defined in 20 U.S.C. 1092 (f)(6)(A)(v)
- “Dating violence” as defined in 34 U.S.C. 12291(a)(10)
- “Domestic violence” as defined in 34 U.S.C. 12291(a)(8)
- “Stalking” as defined in 34 U.S.C. 12291(a)(30)
 - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.
- The school division does not have to consider whether these types of misconduct were so severe, pervasive, and objectively offensive that they effectively denied a person equal access.

Definition of Sexual Assault

“An offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation”

Sex Offenses—Any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse

- **Rape** - (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sodomy** - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sexual Assault With An Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Fondling** - The touching of the private body parts of another person *for the purpose of sexual gratification* without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf

Hypotheticals:

#1: Male 2nd grader sitting next to a female 2nd grader with his hand down the front of her pants

#2: Two male 1st graders touching each others' private body parts

#3: Male 7th grader slaps the rear end of a classmate

#4: Male teacher buys gifts for three female students but no male students

Responding to Sex Discrimination and Sexual Harassment (2020 Regulations)

What Triggers a School's Obligation to Respond

1. Actual knowledge
2. Of sexual harassment or allegations of sexual harassment
3. That occurred in school division's own program or activity
4. And "in the United States"

“Actual Knowledge”

- A report to a Title IX Coordinator will always give schools actual knowledge.
- In K-12, “notice” of sexual harassment or allegations of sexual harassment provided to any employee at the school gives the school division actual knowledge.
- Any individual may report sexual harassment, not just the individual allegedly subjected to misconduct.

“Of Sexual Harassment or Allegations of Sexual Harassment”

- Allegations of conduct that could constitute sexual harassment if proved are sufficient to trigger an obligation to respond.
- In Virginia, allegations of sexual grooming may be sufficient to trigger an obligation to respond.
 - *Doe v. North Carolina State*, 125 F.4th 498 (4th Cir. 2025).

Conduct Within School Division's Own Program or Activity, in the United States

- Includes “any location, event, or circumstance over which the school division exhibits substantial control over both the alleged harasser and the context in which the harassment occurred,” so long as the conduct occurred in the United States

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 20, 2021)

Question: Which settings are covered by the 2020 amendments?

Answer:

- Buildings or other locations part of school's operations, including remote learning platforms.
- Off-campus settings if the school exercised substantial control over the respondent and the context in which alleged conduct occurred (ex. field trip).

*Practice tip:

- Any sexual harassment that occurs in a school's program or activity must be responded to even if it is related to or happens subsequent to sexual harassment that occurred outside the school division's program or activity.

What is the School Division's Obligation When It Has Actual Knowledge of Sexual Harassment?

- Must respond in a way that is not “deliberately indifferent”
 - Defined as “clearly unreasonable in light of the known circumstances.”
 - Division will be held liable if non-compliant.
- Must treat the complainant and respondent equitably
- Title IX Coordinator must offer supportive measures
 - Definition: non-disciplinary, non-punitive, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed.
- Title IX Coordinator must activate grievance process when a formal complaint is filed
 - Once a formal complaint is filed, use of an informal resolution process may be considered.

Supportive Measures to Consider

- Placement of students in different classes
- Provide complainant with escort or different transportation services
- Counseling
- Academic, emotional, and social support
- Mutual No Contact directives
- Extension of deadlines
- Safety plan
- Offending employee placed on administrative leave
- Emergency removal

What Should the Response Be for Employees Generally?

- All employees must be able to recognize sexual violence and harassment of students by other students or school employees.
- All employees should be able to recognize “grooming behaviors” by other employees or other third parties (volunteers, coaches, etc.).
- All employees must know to report suspected harassment or grooming behaviors to the principal or Title IX Coordinator.
- Failure to do so can contribute to liability of the Division under Title IX.

Practice Tips:

- If there is any possible interpretation of conduct as sexual harassment (or other sex discrimination), consult with your Title IX Coordinator.
- **Do not discipline** the student prior to consulting with your Title IX Coordinator.

What is the School Division's Obligation When it Receives a Complaint of Other Sex Discrimination?

Question:

How should a school respond to complaints alleging sex discrimination that do not include sexual harassment allegations?

Answer:

Schools must respond to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination using the “prompt and equitable” grievance procedures that schools have been required to adopt and publish since 1975 when the original Title IX regulations were issued.

- Question and Answers on the Title IX Regulations on Sexual Harassment (July 20, 2021)

Hypotheticals:

#1: Student tells a teacher that a male 12th grade student had sent nude pictures of himself to her friend - a female 9th grade student - over winter break

#2: A grandmother files a Title IX complaint alleging that an 11th grade male student had posted an altered photo on social media with the face of her grandson - a male 10th grader - next to a picture of male genitalia with language suggesting the student's sexual orientation

Grievance Process

Four Major Stages of Grievance Process

1. Evaluation
 - Identification of Complaint
 - Consideration of Dismissal
 - Notice of Allegations
2. Investigation
 - Collect Evidence
 - Provide Access to Evidence
 - Investigative Report
3. Determination
 - Provide Rationale for Outcome
4. Appeal

* Option of Informal Resolution at any time between filing of formal complaint and determination.

Grievance Process Stage 1: Evaluation by Title IX Coordinator

- Determine whether a formal complaint has been filed.
- Determine whether the alleged conduct *could* constitute sexual harassment and whether it occurred in the school division's education program or activity. If not, dismiss.
- If there is a formal complaint alleging conduct that meets the definition of sexual harassment prohibited by Title IX that occurred within the school division's education program or activity and within the United States, the Title IX Coordinator initiates the grievance process:
 - Appoints an investigator;
 - Sends a Notice of Allegations to the parties.

What Triggers Grievance Process?

Receipt of a “formal complaint” that includes:

Definition of “**formal complaint**”: “a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment...As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.”

- (1) Allegations of conduct that satisfy the definition of sexual harassment prohibited by Title IX; and
- (2) Allegations of conduct that occurred within the scope of the school division’s program or activity and within the United States.

Potential Grounds for Dismissal

- **Mandatory Dismissal if the conduct alleged:**
 - Would not constitute sexual harassment prohibited by Title IX even if proved,
 - Did not occur in the School's education program or activity, or
 - Did not occur against a person in the United States.
- **Permissive Dismissal if:**
 - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein,
 - The respondent is no longer enrolled or employed by the School Board, or
 - Specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Notice of Allegations

On receipt of a formal complaint, the Title IX Coordinator gives the following written notice to the parties who are known:

- notice of the grievance process, including any informal resolution process,
- notice of the allegations of sexual harassment, including sufficient details known at the time (parties, conduct alleged, date, location) and with sufficient time to prepare a response before any initial interview,
- a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- a statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
- reference to any provisions in the School Board's code of conduct or the superintendent's Standards of Student Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

Grievance Process Stage 2: Investigation

Requirements for Investigation Under Policy JFHA/GBA

- **Step 1: Collect Information/Evidence.** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties. However, the parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.
 - **Allow Advisor to be Present:** The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor. The choice or presence of an advisor for either the complainant or respondent is not limited to any meeting or grievance proceeding.
- **Step 2: Review all Evidence and Determine What Is Non-Relevant Evidence or Impermissible Evidence.**
- **Step 3: Send ALL Directly Related, Permissible Evidence to the Parties:** The investigator provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- **Step 4: Send Investigative Report to the Parties:** The investigator creates an investigative report that fairly summarizes relevant evidence and sends to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Investigation Step 1: Collect Information/Evidence

- Documents;
- Text messages;
- E-mails;
- School division video footage;
- Cell phone recordings;
- Photos;
- Interviews with both parties and relevant witnesses (see next slide);
- Other evidence provided by either party.



Conduct Interviews

- Conduct all interviews like a journalist - LISTEN and DOCUMENT!
- Use open, **non-leading** questions.
- Remind all interviewed of importance of confidentiality and prohibition of retaliation.
- Obtain the names, addresses, contact info of anyone with knowledge.
- Ask for any other supporting evidence.

Both Parties

- Provide written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare to participate.
- Allow the parties to bring an advisor.
- Be sure to understand both parties' claims about what occurred and the chronology of events.

Respondent

- Give a detailed description of what has been alleged to allow full response.
- Inform the respondent that no conclusions have been made.
- Consider the need for a recorded or written statement.

Investigation Step 2: Review the Evidence Collected

- Were you thorough?
- Is there evidence that is not relevant?
 - Categorically not relevant – evidence of sexual history
- Is there evidence that is not permissible?
 - Protected by legal privilege

Sample Investigation Checklist

Interviewed Complainant	Interviewed Respondent
Interviewed Witnesses	Written witness statements
Interviewed complainant(s) parent(s)/guardian(s)	Interviewed respondent(s) parent(s)/guardian(s)
Examined physical evidence	Reviewed medical information (if privilege is waived)
Reviewed student records	Reviewed social history between parties
Interviewed teachers and/or school staff	Reviewed student attendance and grades
Reviewed video surveillance	Reviewed electronic/web content

Definition of Relevance

- Investigators must receive training on (1) **relevance** and (2) writing reports that fairly summarize **relevant evidence**.
- So, what is “relevant evidence”?
 - Generally, “relevant” evidence is that evidence tending to prove or disprove an alleged fact.
 - Stated differently, it is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.



What is Relevant Evidence?

- The Preamble addresses this definition as follows:
 - “The requirement for recipients to summarize and evaluate relevant evidence, and specification of certain types of evidence that must be deemed not relevant or are otherwise inadmissible in a grievance process pursuant to § 106.45, appropriately directs recipients *to focus investigations and adjudications on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true (i.e., on what is relevant).*” 85 F.R. 30294.
- OCR’s September 4, 2020 “Questions and Answers Regarding the Department’s Final Title IX Rule”:
 - “The Title IX Rule does not adopt the Federal Rules of Evidence for hearings conducted under Title IX. . . .**[T]he Rule uses ‘relevance’ as the sole admissibility criterion.**” Q&A #7.

Irrelevant Evidence

1. Evidence that does not tend to make an alleged fact more or less likely;
2. Evidence that relates to the complainant's "sexual predisposition or prior sexual behavior" is irrelevant.
 - Exceptions:
 - *Evidence about the complainant's prior sexual behavior is relevant if offered to prove that someone other than the respondent committed the conduct alleged by the complainant*
 - *Evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent is relevant if offered to prove consent to the alleged sexual harassment.*

Impermissible Evidence

1. Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
2. A “party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party’s voluntary, written consent to do so.”

Investigation Step 3: Provide All Directly Related, Permissible Evidence to the Parties

- Policy JFHA/GBA: “The investigator provides both parties an equal opportunity to examine and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the completion of the investigative report, the investigator must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.”

Investigation Step 4: Draft Investigative Report

- Policy JFHA/GBA: “The investigator creates an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, sends to each party and the party’s advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.”
 - Summarize all interviews conducted and relevant, permissible evidence collected.
 - Highlight misconduct with specific description of the events, not generalized conclusions.
 - Do not editorialize – but may make credibility determinations, which can’t be based on party’s status as complainant, respondent or witness.
 - Make use of evidentiary attachments, such as photos, e-mails, texts, screen shots, videos, handwritten documents, etc.
 - Summarize both inculpatory and exculpatory evidence.
- Consider whether the parties’ responses to the evidence, if any, should be incorporated into the report.
- Identify specific allegation(s) investigated.
- Include notice of the right to respond to the report/submit written relevant questions to other party through the decision maker.

Additional Potential Investigative Report Elements

- Description of Procedural Steps Taken
 - Written notice
 - Selection of investigator and investigative approach
 - Relevant school board policies/code of conduct provisions
 - Pre-investigation gathering of relevant evidence
 - Witness interview dates
 - Delivery of directly related evidence
 - Parties' written responses to directly related evidence
- Findings of Fact and Credibility Determinations

* These elements are only required in the determination, however, the investigator may also include them in the Investigative Report to assist the decisionmaker. The decisionmaker will decide whether or not to adopt them.

Investigation Step 5: Send Investigative Report

- Policy JFHA/GBA:
- The investigative report will be provided to the parties within 35 days from the date the formal complaint is filed
- "After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party."

Grievance Process Stage 3: Determination

Written Determination of Responsibility/Non-Responsibility

- Must Include:
 - Identification of the allegations potentially constituting sexual harassment;
 - Description of the procedural steps taken;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the recipient's code of conduct to the facts;
 - A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility,
 - Any disciplinary sanctions the recipient imposes on the respondent, and
 - Whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant.
 - The recipient's procedures and permissible bases for the complainant and respondent to appeal.

Findings of Fact

- For each fact in dispute, weigh the evidence and argument submitted by the parties – including making credibility determinations – and make a determination: a “finding of fact.”
- The findings will inform the decisionmaker’s overall determination of responsibility.
- The Preamble states that the decision-maker should be looking at consistency, accuracy, memory, credibility, implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility. 85 FR 30315 and 30330.
 - Consider all witness statements; detail and consistency in stories; corroboration; changes in complainant’s behavior after alleged incident, and potential sources/causes of such changes
- Determine what evidence is worthy of belief and its importance along with necessary and reasonable inferences.
- Rely on direct evidence whenever possible.

Determination of Responsibility/Non-Responsibility

- The decisionmaker must determine whether the requirements for a finding of sexual harassment have been met by applying the recipient's identified standard of proof (e.g., preponderance of the evidence).
 - Ex: Does the preponderance of the evidence support a finding that the conduct was unwelcome, that the conduct was severe, that the conduct was pervasive, that the conduct was objectively offensive, and that the conduct effectively denied the complainant equal access to the education program or activity?
 - Ex: Does the preponderance of the evidence support a finding of each element of sexual assault?
- A recipient **MUST** begin with a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Must include a rationale for determination of responsibility as to each individual allegation of sexual harassment.

Sanctions and Remedies

- **Disciplinary Sanctions:** The decisionmaker has disciplinary authority and may impose disciplinary sanctions on the respondent.
 - Be cautious of potential implications for students with an IEP or Section 504 Plan.
- **Remedies:** The decisionmaker may also identify remedies that will be provided to a complainant. For example:
 - Ensuring that a complainant can move safely between classes by providing a campus escort;
 - Changing class schedules and extracurricular activities to ensure complainant and respondent are separated;
 - Providing access to counseling services;
 - Providing academic resources and support;
 - Any other remedies it deems appropriate.

Intersection of Title IX and IDEA/504/ADA

- Title IX does not trump federal disability laws.
- Disability accommodations should be offered to both the complainant and respondent, as appropriate.
- WCPS cannot change a student's placement through the Title IX process without a Manifestation Determination Review, even in cases of emergency removal. If the conduct is determined to be a manifestation of the respondent's disability, WCPS cannot change the respondent's placement.

**** Practice tip:** It may be helpful to consult with the complainant and/or respondent's case manager and/or IEP team at various points in the Title IX process.

Provision of Written Determination

- JFHA/GBA: “A decision will be issued within 10 working days from the date the investigative report is submitted to the decision-maker.”
- The recipient must provide the written determination to the parties simultaneously.
- The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Grievance Process Stage 4: Appeals

- Right to an appeal: Either party may appeal from a determination regarding responsibility or from a dismissal of a formal complaint or any allegations therein, on the following bases:
 - **Procedural irregularity** that affected the outcome of the matter;
 - **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator, or decision-maker had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Policy JFHA/GBA - Procedure for Appeal

1. Notification of appeal must be given in writing to the Title IX Coordinator within 5 working days from the date the written determination regarding responsibility is given to the parties.
2. The Title IX Coordinator:
 - Notifies the other party in writing when an appeal is filed and implements appeal procedures equally for both parties; and
 - Ensures that the decision-maker for the appeal complies with the standards set forth in Title IX and this policy.
3. The appeal decision-maker:
 - Gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - Reviews the evidence gathered by the investigator, the investigator's report, and the decision-makers written decision;
 - Issues a written decision describing the result of the appeal and the rationale for the result within 30 calendar days from the filing of the appeal; and
 - Provides the written decision simultaneously to both parties and the Title IX Coordinator.

Informal Resolution Process

What is an Informal Resolution Process?

- 2020 Preamble: “Where the facts alleged in a formal complaint are not contested, or where the respondent has admitted, or wishes to admit responsibility, or where both parties want to resolve the case without a completed investigation or adjudication, § 106.45(b)(9) allows a recipient to facilitate an informal resolution of the formal complaint that does not necessitate a full investigation or adjudication.”
- The 2020 regulations do not dictate the form of the process.
- Potential forms can include mediation, voluntary resolution agreements, or other administrative resolutions.

When Can WCPS Offer an Informal Resolution Process?

- At any time after a formal complaint has been filed but before reaching a determination regarding responsibility, and
- If written notice is provided to both parties that meets the regulatory requirements, and
- If both parties voluntarily consent to the process in writing.

When Is WCPS Prohibited from Providing an Informal Resolution Process?

- As a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right;
- Before a formal complaint has been filed (under 2020 regulations);
- If the parties don't provide voluntary written consent;
- If at any time prior to agreeing to a resolution, either party wants to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; or
- If the formal complaint includes allegations that an employee sexually harassed a student.

What Does the Written Notice Need to Include?

- The allegations;
- A description of the informal resolution process;
- The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

What is the Facilitator's Role in Informal Resolution?

- To receive training;
- To work with the Title IX coordinator on matters where informal resolution may be appropriate;
- To facilitate the informal resolution process;
- To serve “impartially,” and;
- To work with the Title IX coordinator to document the outcome of the process.

WCPS' Current Informal Resolution Policy

Policy JFHA/GBA - INFORMAL RESOLUTION PROCESS

ONLY after a formal complaint is filed, the Title IX coordinator may arrange for informal resolution upon the voluntary, informed, and written agreement of both the complainant and the respondent. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Informal resolution procedures cannot be used to resolve allegations that an employee sexually harassed a student. If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. If the matter is not resolved, the formal grievance process is resumed.

Requirement of Impartiality

Impartiality in the Grievance Process

- The Preamble includes significant discussion addressing concerns by commenters regarding potential bias and unfairness in the grievance process.
 - Examples include: decision-maker's financial and reputational interests encourage protecting the institution; inappropriately combining administrative and adjudicative roles; past role as advocate for victim's or respondent's rights.
 - Also includes concerns about marginalized groups: racial minorities, LGBTQ community, disabled persons.
- The Rule provides that a recipient's grievance process must:
 - "Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, **not have a conflict of interest or bias** for or against complainants or respondents generally or an individual complainant or respondent."
 - Further, "A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on . . . **how to serve impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias."
- Regulations state that being impartial = avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Preventing Biased Decisions

- Bias may be created by differences in cultural backgrounds; age; race; religion; life experiences; trauma.
 - Decision-makers must remain impartial, avoiding sympathy or a personal perspective on the claim.
 - Avoid sex-based stereotypes (e.g., women have regret and/or lie about sexual assault; men are sexual aggressors).
- Decision-makers may nonetheless draw reasonable inferences from the evidence.
- The Preamble encourages recipients to apply an objective (reasonable person), common sense approach to evaluate whether a particular person is biased.

Recordkeeping

Maintain for a period of 7 years records of:

- each investigation of allegations of sexual harassment prohibited by Title IX, including any determination regarding responsibility and any audio/audiovisual recording/transcript, if any, required under the Title IX regulations, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Board's education program or activity;
- any appeal and the result therefrom;
- any informal resolution and the result therefrom; and
- all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will also be made available on the Board's website.

For each response required under 34 C.F.R. § 106.44, the Board must create, and maintain for a period of 7 years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment prohibited by Title IX. In each instance, the Board will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If the Board does not provide a complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.